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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

AP10853

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on 5/18/2011

Signature /Cindy Bernges/

Typed or printed name Cindy Bernges

Application Number

10/584,031

Filed

06/22/2006

First Named Inventor

Ralph Gronau

Art Unit

3657

Examiner

Sy, Mariano Ong

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Christine M. Mackiewicz/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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5/18/11

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ralph Gronau	Group Art Unit:	3657
Serial No.:	10/584,031	Examiner:	Sy, Mariano Ong
Confirmation No.:	6888		
Filed:	June 22, 2006		
Title:	METHOD FOR CONTROLLING THE PRESSURE BUILDUP IN AN ELECTRONICALLY CONTROLLABLE BRAKE SYSTEM		
Attorney Docket No.:	AP10853		

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In response to the Office Action dated January 18, 2011 and the Advisory Action dated May 2, 2011, the attached Notice of Appeal and the following Pre-Appeal Brief Request for Review are being submitted.

Remarks/Arguments begin on page 2.

REMARKS

Claims 1-10 have been canceled and Claims 11-20 remain pending. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Pueschel et al. (US 6,715,846) and claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pueschel et al.

Applicants believe there is a clear error regarding the Examiner's rejections included in the Final Rejection and Advisory Action. The Final Rejection and Advisory Action do not address the Applicants' arguments made in the previous responses to the USPTO and thus create a question as to the prior art showing each and every one of the essential elements required for a prima facie rejection.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument *and answer the substance of it*. MPEP §707.07(f) (Emphasis Added). The Examiner's failure to address the Applicants' arguments has led to an unclear situation as to what is the outstanding issue between the Applicants and the Examiner. "The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." MPEP § 7060.07.

Applicants believe the cited differences between the Applicants' brake system and that of Pueschehl et al. create a question as to the prior art showing each and every one of the essential elements required for a prima facie rejection. As long as the argued differences between the systems are outstanding and have not been addressed by the Examiner the Applicants are unable to make a determination on how to properly proceed with prosecution of the Application.

In the Office Action Response dated November 10, 2011, Applicants amended their claims. Applicants argued that the claimed brake system is a dynamic and that Pueschel et al. discloses a fixed pneumatic and hydraulic brake system. Specifically, that the claimed method of controlling a brake system includes, "*lowering the operating point* of the vacuum booster by a predetermine operation point-reduction pressure value" and that, "Pueschel does not activate the hydraulic pump *based on an operating point that is reduced* by a predetermined operating point reduction value..." (Office Action Response dated November 10, 2011 at page 5. Emphasis added.)

The rejection over Pueschel et al. in the Final Office Action cited the new claim language. However, the Examiner broadly referred to the specification of Pueschel et al. as

disclosing Applicants' claimed language, but did not specifically address Applicants' amendments and arguments over the differences in the brake systems. Applicants' again stated the differences between the systems in the Final Office Action Response at pages 5-6,

"The saturation point of the brake booster, i.e. the operating point, is set at a fixed pressure value during the design of the system based upon the size of the brake booster (column 5, lines 48-50). The saturation point of Pueschel et al. is not shifted or "lowered" during operation of the brake system. Additionally, Pueschel et al. does not disclose, measuring a pressure gradient, during operation of a system and lowering the operating point based on the gradient to establish a corrected operating point.

Therefore, Pueschel et al. does not disclose, "detecting a pressure gradient," and when the "pressure gradient is exceeded, lowering the operating point of the vacuum booster by a predetermined operating point-reduction pressure value...and thus establishing a corrected operating point."

The Examiner responded to the Applicants' arguments by stating, "Pueschel et al. (US 6,715,846) disclosed the saturation point of the brake booster being the operating point, see col. 8, lines 28-67 and col. 9, lines 1-2." Advisory Action at page 2. *This statement is not responsive to the Applicants' arguments.* Applicants' arguments do not state or depend on whether the operation point of Pueschel et al. is the same or different than the saturation point. The outstanding issues cited by the Applicants are not addressed, and therefore, the Examiner has not established a prima facie rejection.

Regardless of the definition of operating point and saturation point, Applicants' state that Pueschel et al. is a fixed system where the operation/saturation point does not change during operation of the brake system and that Applicants' have a dynamic system where the operating point is changed based upon a measured pressure gradient. The Examiner's response does not address these statements from the Applicants. Because these outstanding differences between the system of Pueschel et al. and Applicants' claims have not been addressed, there is a clear error in the Examiner's response that creates a question as to the prior art showing each and every one of the essential elements required for a prima facie rejection.

The Applicants cannot make a proper determination on how to continue to prosecute the application while these outstanding differences between the system of Pueschel et al. and Applicants' claims have not been addressed. Accordingly, Applicant believes that a clear error exists based upon the Final Rejection and the Advisory Action from the Examiner. Applicants hereby request a response which addresses Applicants' arguments in a manner that will clarify

the outstanding issue and allow Applicants to determine how to continue prosecution of the application.

Applicants do not believe any additional fees are due in connection with the filing of this Request. If, however, Applicants are in error and there are additional fees due, including any extension fees, please charge all such required fees to Deposit Account 50-2570.

Respectfully submitted,

/Christine M. Mackiewicz/

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